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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 18 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Cable Television)
Consumer Protection and Competition Act)

MM Docket No. 92-259 /

unopposed, Yankee argued that the new Rules, as drafted, would unfairly create an exemption from the retransmission consent requirements as to superstations delivered via satellite, but not for the same signals delivered by microwave or other distribution systems. Thus, an unintended impact of the Rule would be to unfairly discriminate in favor of satellite carriers over microwave or other signal delivery means and entities.

In denying Yankee's request, the Commission stated that "the evidence provided by Yankee regarding the extent to which signals will be delivered by satellite instead of microwave is speculative, and it is unclear to whether cable systems will actually change the delivery system used to receive [superstations]." Further, the Commission stated that the October 6, 1993 effective date would provide it with sufficient time to consider Yankee's petition alleging an unintended incidental and discriminatory impact of its Rules. The Commission then tersely concluded that Yankee had not demonstrated a stay was needed to avoid irreparable harm.

This supplement provides the Commission with a recently received letter from Helicon, owner of a small cable company serving St. Johnsbury, Vermont, which receives delivery of distant superstation WSBK from Yankee. (Thus, there is no must-carry option for Helicon). This letter corroborates statements made in Yankee's June 14, 1993 petition for reconsideration concerning Helicon's intention to discontinue receipt of the

Yankee feed for WSBK unless free retransmission consent can be provided for WSBK. Letters have already been supplied to the Commission from A-R Cable, State Cable TV, Better Cable TV, and Casco Cable TV, memorializing their similar intentions to switch carriage of superstation WSBK-TV from Yankee to a satellite feed. The reality of business planning dictates that decisions of this kind are not made on the eve of the effective date of a new Rule -- such must and will be made well in advance of October 6, 1993.

To date Yankee has received written or verbal notification of impending termination from twelve of the fourteen systems to which it provides microwave delivery of superstation WSBK. Loss of these customers will jeopardize the very existence of Yankee, a common carrier that has been serving some of these systems for more than twenty years. Thus, it is clear that the irreparable harm faced by Yankee is not speculative, but rather is quite real and imminent.² These developments further underscore the necessity of a stay pending action by the Commission on Yankee's Petition seeking modification of the discriminatory language of the "superstation exemption."

Yankee respectfully submits that the stay should be implemented by applying the superstation exemption to all superstation signals if those signals were superstations as of

² Yankee is simultaneously supplementing its pending "Petition for Emergency Reconsideration and Request for Modification of Rules of Yankee Microwave, Inc." with the submission of this additional evidence of immediate harm.

May 1, 1991, regardless of the current means of delivery of the signal. In the alternative, the exemption should be stayed in its entirety to avoid unfair preferential treatment of satellite carriers.

WHEREFORE, for the foregoing reasons, as well as those advanced in its initial stay request and subsequent petition for



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June 11, 1993

Mr. Bernard K. Karlen
Yankee Microwave, Inc.
31 Ward Drive
New Rochelle, NY 10804

Dear Mr. Karlen:

Unfortunately if our small system of St. Johnsbury, Vermont, with 4,300 subscribers does not receive Retransmission Consent from WSBK-TV, we will then be forced to take our signal for WSBK-TV from the Eastern Microwave satellite feed for which we require no Retransmission Consent.

The substitution of the satellite signal for the same signal now being delivered by Yankee Microwave will be a considerable additional expense, which, regrettably, we may be forced to pass along to our subscribers.

I hope to hear from you on this matter soon.

Sincerely,

David M. Baum
Vice President
Marketing/Programming

cc: Mark Ellingwood
Thomas Gimbel

CERTIFICATE OF SERVICE

I, Kathy Nagl, a secretary in the law firm of John D. Pellegrin, Chartered do hereby certify that I have on this 18th day of June, 1993 transmitted a copy of the attached "Supplement to Petition for Reconsideration of Denial of Yankee Microwave, Inc.'s Request for Stay" by hand to the following:

The Honorable James H Quello,
Acting Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

The Honorable Andrew C. Barrett,
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

The Honorable Ernie S. Duggan